[fol. 39] IN SUPREME COURT OF IOWA

[Title omitted]

PRÆCIPE FOR TRANSCRIPT OF RECORD—Filed February 26, 1937

To Honorable B. W. Garrett, Clerk of the Supreme Court of Iowa:

Please include the following in the transcript of the record to be transmitted to the Supreme Court of the United States pursuant to the allowance of appeal thereto:

1. On all papers filed in your office, show date of such filing.

2. The Abstract of the Record, filed in your office, which shows, inter alia:

(a) Plaintiffs' Petition, including exhibits thereto;

(b) Plaintiffs' Notice of Appeal (to the District Court) from the Order of the State Board of Assessment and Review;

(c) Answer of Defendant;

(d) Reply of Plaintiffs;

(e) The stipulations and evidence on the trial;

(f) The opinion of the trial court, embodying its judgment;

(g) The Notice of Appeal to the Supreme Court of Iowa.

3. The following portion of Appellants' Brief in the Iowa Supreme Court specifying the points relied on for reversal: Page 5, beginning with the caption "Division I" and ending with the sentence immediately preceding the subhead "Proposition 1" on page 6.

[fol. 40] 4. The Opinion of the Iowa Supreme Court.

5. The judgment of affirmance entered in the Iowa Supreme Court.

6. Petition for Appeal to the Supreme Court of the United States.

7. Assignments of Errors filed with said Petition for Appeal.

8. Order allowing said appeal and approving bond thereon.

9. Statement as to Jurisdiction of the Supreme Court of the United States, filed with said Petition for Appeal.

10. Acknowledgment by counsel for appellee of service of copies of said Petition for Appeal, Assignments of Error and Statement.
11. Citation and acknowledgment of service thereof.
12. This Præcipe for Transcript.
13. Any stipulations or orders settling the record.
14. Your own certificate to the record.

Alan Loth, Wm. L. Hassett, Attorneys for Appellants.

Due, timely and proper service of the foregoing Præcipe and receipt of copy thereof is acknowledged, at Winterset, Iowa, this 25th day of February, 1937.

Iowa State Board of Assessment and Review, by Clair E. Hamilton, Special Assistant Attorney General of Iowa, Its Attorney.

[fol. 41] [File endorsement omitted]

IN SUPREME COURT OF IOWA, MAY TERM, 1936

In Equity

11—43610

HENRY O. HALE and ELIZABETH C. HALE, Appellants,

vs.

IOWA STATE BOARD OF ASSESSMENT AND REVIEW, Appellee

Appeal from Webster County District Court, Hon. T. G. Garfield, Judge

Alan Loth, of Fort Dodge, and William L. Hassett, of Des Moines, Attorneys for Appellants.

Clair E. Hamilton, Special Assistant Attorney General, of Winterset, Attorney for Appellee.

Abstract of Record from District Court of Webster County—Filed April 27, 1936

[fol. 42] On February 24, 1936, plaintiffs filed their verified

PETITION IN EQUITY

which, as amended, is as follows:

1. That plaintiffs are husband and wife, residing at Fort Dodge, Webster County, Iowa; and are and have always been residents and citizens of Iowa.

2. That they made due return as to their income for the year 1935, a true copy of which is attached hereto, marked Exhibit "A" and made part hereof; and said return was filed with the defendant Board in January, 1936.

3. That during the year 1935, they jointly owned the bonds hereafter referred to and which are described in said return and also in paragraph 3 of Exhibit "C" hereof; and that they received interest during said year upon said bonds in the total aggregate sum of $36,893.75, as itemized in said Exhibit "A".

4. That all of said interest accrued and was paid to them in accordance with the provisions of said bonds and solely because of their ownership of said bonds.

5. That all of said bonds were issued after April 16, 1909, on which date the statute of Iowa then known as Section 1304 of the Iowa Code of 1907 providing that "The following classes of property are not to be taxed" was amended by the 33rd General Assembly of Iowa so as to add thereto the following: "municipal, school and drainage bonds hereafter issued," which clause was later amended by adding thereto the phrase "by any municipality, school district, drainage district or county within the state of Iowa"; so that, prior to the issuance of said bonds, the statutes of the state of Iowa provided as follows:

"The following classes of property are not to be taxed: * * * municipal, school and drainage bonds hereafter [fol. 43] issued by any municipality, school district, drainage district or county within the state of Iowa."

And that the Road Bonds above referred to were all issued under, and after the passage of, the Iowa statute now known as Section 4753-a-13 of the Iowa Code, which provides that:

"Bonds and Road Certificates (whether issued in anticipation of special assessments or in anticipation of annual allotments of the primary road fund) shall not be taxed,"

and were such bonds as are there described.

And that the $1,000 bond of the State of Iowa denominated "Soldiers' Bonus Bond" was issued pursuant to Chapter 332 of the acts of the 39th General Assembly, Sub-

section 10, of which provides:

"Exemptions. All payments and allowances made under this act shall be exempt from taxation * * * and all bonds issued hereunder shall be exempt from taxation."

6. That the statutes relative to all bonds such as are herein described, which existed at the time of their issue, provided that they should not be issued or sold for less than par and accrued interest, said statutes being now known respectively as Sections 4407, 1175, 5278 and 4753-a-13 of the Code of Iowa.

7. That each of said bonds is negotiable in form, being payable to bearer; and each of said bonds was issued by the state, district or county emitting the same for sale and circulation in Iowa, and was sold by such issuer for an amount equal to or greater than par and accrued interest; and that each of said bonds was acquired by plaintiffs either [fol. 44] direct from the issuer thereof, or from the original purchaser from such issuer.

8. That said bonds are all of the kind described and referred to by the respective statutes referred to in paragraph 5 hereof.

9. That about February 8, 1936, acting upon the data contained in said return, Exhibit "A", defendant undertook to assess a tax of $1,387.24 upon the 1935 income of these appellants because of, and based upon said "Interest on State, Road and Municipal Bonds", by giving a notice of such assessment to these plaintiffs, of which a copy is attached hereto, marked Exhibit "B", and made part hereof.

10. That thereupon these plaintiffs filed with said Board an appeal for the revision and cancellation of such tax, of which a copy is attached hereto, marked Exhibit "C", and made part hereof; and that on February 13, 1936, a hearing was had before said Board upon said appeal, and a ruling was then and there entered denying the appeal and confirming the attempted assessment of said tax, a copy of which ruling is attached hereto, marked Exhibit "D", and made part hereof.

11. That thereupon and within the time permitted by law, a notice of appeal to this court was duly served as provided by law, and this petition is filed pursuant to such

notice, which is likewise filed herein, together with the bond required by law.

12. That there is no warrant or authority in any law for the assessment or imposition of the alleged tax herein appealed from. That Chapter 329-F1 of the Iowa Code, properly construed, does not impose or authorize any tax upon or because of interest received from any of such bonds; that such interest is not "taxable" income such as is referred to in said statute; that, there being no law authorizing such assessment, [fol. 45] it is unwarranted, illegal and void, and the Board is without power to assess or collect such tax.

13. That said statute does not repeal nor impair the policy expressed by the statutes referred to in paragraphs 5 and 6 of this petition; and that said statutes forbid the assessment here made.

14. That upon the issuance of, and payment of, each of said bonds, a contract arose between the issuer and the purchaser; that the aforesiad statutory immunity from taxation applicable to such bond, became part of such contract; and that the holder of each of said bonds, after paying for same, held a contract that such bond should not be taxed and should be immune from taxation. That accordingly, the assessment now attempted by defendant impairs the obligation of plaintiffs' contracts and violates the same, in violation of the rights of these plaintiffs, as holders of said bonds, which are guaranteed to them by Article I, Section 10, of the Constitution of the United States, and by Article I, Section 21, of the Iowa Constitution.

15. That Chapter 329-F1 of the Iowa Code, if construed to authorize such assessment is, in that respect, unconstitutional and void and violates the constitutional and contractual rights of these plaintiffs which are last above referred to.

16. That the assessment aforesaid is in essence, operation and effect, and in form as well as in substance, an attempt to tax the bonds contrary to the respective statutes referred to in paragraph 5 hereof, and to plaintiffs' contractual and constitutional rights heretofore mentioned. That the assessment is upon interest received wholly and directly on said bonds, paid direct to these plaintiffs from the issuers of said bonds, and upon such interest in the very form in

which it was received; that, as shown by said return, plaintiffs had no other income during 1935 upon which any tax [fol. 46] was or could be claimed; that plaintiffs, as holders of said bonds, had the absolute and inviolable right to receive such interest as was paid them thereon, which right was not and could not be made subject to any excise or privilege tax, nor does Chapter 329-F1 of the Iowa Code impose or provide for any excise or privilege tax upon the receipt of such income as is here involved, nor could it constitutionally do so without impairing the obligation of plaintiffs' contracts, and depriving them of their property without due process of law and without compensation, in violation of the 14th Amendment to the Constitution of the United States, and of the Constitution of Iowa.

Wherefore plaintiffs pray for a decree which shall determine that they had no taxable income for the year 1935, and setting aside the pretended assessment herein appealed from, and decreeing that the interest from each and all of said bonds is exempt from such tax, and that defendant is without power or authority to impose any tax herein, and for such other and further relief as may be equitable herein, and for judgment for costs.

(Duly signed and verified.)

Attached to the petition are the following exhibits:

EXHIBIT "A" TO PETITION

Income Tax Return for 1935, the material parts of which are as follows:

Describe business, profession or occupation: no business; farm owner and investor.

3. Interest from all sources, including exempt interest $1,322.69. In addition to the interest reported, taxpayers held bonds during 1935 and received interest therefrom as follows:

[fol. 47]

	Principal	Interest
State of Iowa, Soldiers Bonus Bond	$1,000	$45.00
Iowa School District Bonds	666,900	32,648.75
Road Bonds of Iowa Counties	82,000	4,072.50
County Bonds Issued by Iowa Counties	3,000	127.50
Totals	$752,900	$36,893.75

All the foregoing bonds were issued and held long prior to March 8, 1934, except the following (listing road and school bonds in the principal sum of $27,000 which yielded interest of $1,187.50). Taxpayers claim that the interest on each of said bonds is not taxable; that these bonds were all issued under statutes exempting them from taxation; that the Iowa Income Tax Act does not impose a tax on said items of interest; that, if it did, it would, as to the bonds issued prior to its passage, be unconstitutional. Taxpayers accordingly refuse to pay any tax on said items of interest.

6. Income from rents and Royalties. Deficit	$5,031.16
9. Total income in items 1 to 8: deficit or loss in taxable income	$3,708.47
Deductions (Itemized in original exhibit for interest, taxes, contributions to charities, etc.)	3,120.50
Other deductions authorized by law: see statement above relative to interest claimed as exempt.	
15. Net Income: Deficit	$6,828.97

[fol. 48] EXHIBIT "B" TO PETITION

is a "Notice of Assessment" by defendant to plaintiffs dated February 8, 1936, stating that the Income Tax Division of defendant has charged plaintiffs with an individual income tax of $1,327.24. Computation of the tax and the elements on which it is based is included in this notice, as follows:

1. Net income disclosed by return: deficit		$6,828.97
As corrected		30,064.78
Net adjustment		$36,893.75
Unallowable deductions and additional income:		
Interest from State, Bond and Municipal Bonds	$36,893.75	
2. Tax as corrected. Schedule 1	$30,064.78	
Tax on $30,064.78	$1,403.24	
Less Personal exemption and credit for dependents	16.00	
Total Tax assessable	$1,384.24	

and said exhibit requires remittance thereof within 10 days, and states that an appeal may be taken to the defendant Board for a revision of this tax within 90 days. Signed by Chairman of defendant Board.

EXHIBIT "C" TO PETITION

is plaintiffs' Application for Abatement of Income Tax and Appeal for Revision of Tax, filed with defendant Board with respect to the tax stated in Exhibit "B", and within the time allowed thereby, stating that the assessment is against interest from bonds of the State of Iowa, its counties, [fol. 49] school districts and municipalities, and Iowa Primary Road Bonds, and is unwarranted, and illegal, on the grounds specified (which are the same as those specified in the petition in equity in this action and are not therefore repeated here). This exhibit also contains a list of the bonds and interest involved, in more detail than in Exhibit "B", as follows:

(a) School Bonds issued prior to March 8, 1934, and since April 16, 1909, by various school districts in Iowa, of total aggregate par value of $649,900. (b) School Bonds as above, issued after March 8, 1934, of a total aggregate par value of $17,000; (c) County Bonds issued by Pocahontas County; Iowa, prior to March 8, 1934, par value $3,000. (d) Iowa Primary Road Bonds issued by Iowa counties prior to March 8, 1934, and after April 16, 1909, in anticipation of the collection and allotment of Primary Road Funds, pursuant to Sections 4723 and 4723-2-1e of the Iowa Code of the total par value of $82,000; (e) Soldiers' Bonus Bond issued by the State of Iowa prior to March 8, 1934, of the face value of $1,000.

EXHIBIT "D" TO PETITION

Order of defendant Board on the claim made in Exhibit "C" dated February 13, 1936, reciting appearances of taxpayers by counsel, a hearing by the board, and that the assessment of a tax of $1,387.24 is correct, legal and should be affirmed, and overruling the application of the taxpayers for its revision and abatement. Duly signed by chairman of Board and shows all members of the Board concurring.

On February 24, 1936, plaintiffs also filed their

NOTICE OF APPEAL

from the order of the Board of February 13, 1936 (being [fol. 50] Exhibit "D" above) in due form, directed to defendants, reciting an appeal from said order to the district court, the filing of a bond and petition in said court, and requiring defendants to appear in said court and answer on the second day of the March, 1936, term of said court which convenes and will be held at Fort Dodge, Iowa, March 9, 1936. Duly signed. Shows due and timely service on the defendant Board.

On March 7, 1936, the defendants filed

ANSWER OF IOWA STATE BOARD OF ASSESSMENT AND REVIEW

1. Defendant denies each and every allegation contained in plaintiffs' petition except such as are herein expressly admitted.

2. Defendant admits Paragraph 1, 3, and 4 of the petition; and admits paragraph 2 thereof except the statement as to the return of income filed by plaintiffs, and denies that said return was a correct return as required by the income tax laws of Iowa.

3. As to whether the bonds were issued after the dates alleged in paragraph 5, defendant has neither knowledge nor information, and therefore denies same.

4. Admits the allegations of Paragraphs 6 and 7 of the plaintiffs' petition.

5. Answering Paragraph 8 the defendant denies the allegations thereof for the reason that it has no information concerning the correctness thereof.

6. The defendant also admits the allegations contained in Paragraphs 9, 10 and 11 of the plaintiff's petition.

7. The defendant further alleges that it denies the allegations of Paragraphs 12, 13, 14, 15 and 16. It further alleges [fol. 51] that the tax provided for in Chapter 329-F1 in the Code of 1935 is not a property tax but an excise tax and

that the exemption granted in Section 1304 of the Code of 1907, now appearing as Section 6944 (2), applies only to property tax and has no application to an excise tax. That the said additional assessment made by the State Board of Assessment and Review as alleged in Paragraph 9 of the plaintiffs' petition was not an assessment of general property taxes but an assessment under the provisions of Chapter 329-F1 of the Code of 1935, which provides for an excise tax. That for that reason the acts of the Board of Assessment and Review in making said additional assessment does not impair the obligation of an existing contract nor does it violate in any way Article I, Section 10, Constitution of the United States, and Article I, Section 21, of the Constitution of Iowa; nor does the action of the Board of Assessment and Review or the provisions of Chapter 329-F1 deprive the plaintiffs of their property without due process of law in violation of the Fourteenth Amendment to the Constitution of the United States or the provisions of the Constitution of Iowa.

Wherefore, defendant prays the appeal be dismissed and for a decree affirming and upholding its action and declaring the additional assessment valid and for general equitable relief including costs. (Duly signed and verified.)

On March 19, 1936, plaintiffs filed their

REPLY

1. They deny each and every allegation contained in said answer except such as admit allegations contained in the plaintiffs' petition.

[fol. 52] 2. As to paragraph 7 of said answer, and in addition to the foregoing denial, they deny that Chapter 329-F1 is an excise tax; they deny that Section 6944 of the Code has no application to an excise tax; they deny that the additional assessments made by defendants assesses an excise tax. They allege that the assessment here involved is essentially an attempt to impose a tax on the bonds, no matter by what name it my be called. They allege that the exemption specified in Section 6944 of the Code applies to such tax as is here claimed, regardless of whether such tax be an excise tax or not. And they allege, separately as to each

sentence of paragraph 7 of said answer other than the first, that said paragraph contains nothing more than a conclusion of law and argument of counsel, and states no issuable or ultimate fact, and that accordingly all of said paragraph 7 after the first sentence is improper, and they except thereto and move to strike the same for the foregoing reasons.' (Duly signed and verified.)

Thereafter on March 23, 1936, the cause came on for trial and was tried to the court in equity, and the following proceedings were had and duly made of record:

STIPULATION AS TO CERTAIN FACTS

The parties in open court stipulated and agreed as follows:

(2) That during the month of January, 1936, the plaintiffs filed with the Iowa State Board of Assessment and Review a joint income tax return (as husband and wife), and that Exhibit "A" attached to the Petition is a true copy thereof.

(3) That during the year 1935, they, the plaintiffs, did jointly own the bonds described in their return (Exhibit "A" attached to their Petition in this case) which bonds are also described in Exhibit "C" attached to the Petition [fol. 53] in this case. And that during said year 1935 they received interest upon the said bonds in the total aggregate sum of $36,893.75, which interest and the sources thereof is correctly itemized in the said Exhibit "A".

(4) That all of said interest accrued and was paid to the plaintiffs during the year of 1935 and solely because of their ownership of said bonds.

(5) That all of said bonds (except the Iowa Soldiers Bonus Bond) were issued after the enactment of what now appears to be Section 6944 (5) of the Code of Iowa for 1935. That the Soldiers Bonus Bond was issued pursuant to the provisions of Chapter 332 of the Acts of the Thirty-ninth General Assembly. That the Primary Road Bonds were bonds issued by the various counties of the State of Iowa pursuant to what now appears as Section 4753-A13 of the

Code of 1935, and were issued after April 19, 1919, the date on which Chapter 237 of the Acts of the Thirty-eight-General Assembly became a part of the law of this state.

(6) That on or about the 8th day of February, 1936, the defendant Board of Assessment and Review did levy an additional assessment upon and against the plaintiffs in accordance with the notice of assessment, copy of which is attached to the Petition in this case and marked Exhibit "B", and that thereafter the plaintiffs did make application to the defendant for abatement of such additional tax and did prosecute their appeal for revision of the same, all in accordance with Exhibit "C" attached to the Petition in this case.

(7) That the application for abatement of tax and appeal for revision of same referred to in the last preceding paragraph, was duly considered by the defendant, which did, thereafter and on or about the 13th day of February, 1936, make and enter its findings denying the said application for [fols. 54-57] abatement and denying the application for revision all in accordance with Exhibit "D" attached to the Petition in this case.

(8) It is conceded by the parties hereto that in so far as the notice and order of additional assessment, application for abatement of the tax, and appeal for revision of the tax, findings of the Board of Assessment and Review, and notice of appeal to this court are concerned, all of said proceedings have been had and taken in due time and in the manner provided by law and that this court has jurisdiction of the parties and the subject matter of this cause.

[fol. 58] Both parties rest.

Evidence closed.

[fols. 59-67] Findings, Judgment and Decree, filed April 22, 1936, omitted in printing as it is incorporated verbatim in the opinion of Supreme Court of Iowa.

[fol. 68] NOTICE OF APPEAL

Thereafter, on April 24, 1936, plaintiffs filed their Notice of Appeal from the foregoing Findings, Judgment and De-

cree, in proper form, directed to the Iowa State Board of Assessment and Review, and its attorney of record in the lower court, stating that the appeal is taken from said findings, judgment and decree to the Supreme Court of Iowa for the May, 1936, Term thereof, duly signed by counsel for plaintiffs.

[fol. 69] IN SUPREME COURT OF IOWA

[Title omitted]

EXCERPTS FROM APPELLANTS' BRIEF AND ARGUMENT—Filed June 19, 1936

"The court erred in adjudging that the asessment be affirmed and the appeal therefrom dismissed, and that the income tax law does not 'result in the impairment of any constitutional obligation in violation of the State or Federal Constitutions.' * * *

"This was erroneous because the state may not, directly, or through its subdivisions, sell a bond under a statute which provides it shall not be taxed, and later impose a tax on the interest received by the individual holding such bond as a mere incident of his ownership. Such tax impairs the obligation of the contract, in violation of Section 10 of Article I of the Federal Constitution because:

"1. The statutory exemption created a contract with the bondholders which cannot be impaired by a later tax;

"2. A tax on individual income derived solely from the ownership of tax-exempt securities violates the exemption, being essentially a tax on the bonds or their ownership;

"3. The tax on this income cannot be a privilege tax so as to escape the exemption, because plaintiffs exercise no privilege to which the tax can be ascribed. It is therefore a tax imposed solely because of their ownership of the bonds; and that is a property tax within the exemption.

"4. The authorities relied on by the trial court do not support his decisions. They either apply to entirely different questions, or else support our claims.

"5. The exemption cannot be construed as though it said that the bonds shall be 'exempt from all property taxes

except income taxes'; because they contain no such exception, and no rule of construction permits reading it into them.

These specifications will be separately argued under the propositions which follow."

[fol. 70] IN SUPREME COURT OF IOWA

43610

HENRY O. HALE and ELIZABETH C. HALE, Appellants,

vs.

IOWA STATE BOARD OF ASSESSMENT AND REVIEW, Appellee

Appeal from Webster County District Court

Hon. T. G. Garfield, Judge

OPINION—Filed January 19, 1937

Suit in equity to annul an Iowa income tax assessment against the plaintiffs, the income consisting solely of interest received on tax exempt municipal securities. It is the claim of plaintiffs that the assessment is in reality upon the bonds themselves and therefore impairs the contractual immunity from taxation which inheres in the bonds and is violative of Article I, Section 10 of the Federal Constitution, and further that the Iowa Income Tax Act does not authorize assessing such interest as taxable income. By way of defense it is alleged and claimed by the appellee that the Iowa Income Tax Act is a general income tax law and includes all income not specifically exempted by the act itself, and that interest on tax exempt municipal securities such as those owned by the plaintiff are not exempted by the provisions of the income tax act and therefore such interest, along with all other taxable income is subject to the tax, and that this is not a property tax but an excise tax and not a tax on the bonds themselves, and that the general tax exemption statutes have reference to direct property tax and not to an excise tax, and that therefore the income tax act does authorize the imposition of said [fol. 71] tax upon the interest received by the plaintiffs

from the municipal securities owned by them, and that the tax is a valid exercise of the taxing power of the state and does not violate any constitutional provision, and the imposition of said tax does not impair any contractual immunity under the constitution. The trial court denied the plaintiffs' petition and upheld the tax and plaintiffs have appealed.

Affirmed.

Alan Loth, of Fort Dodge, and William L. Hassett, of Des Moines, Attorneys for Appellants.

Clair E. Hamilton, Special Assistant Attorney General, of Winterset, Attorney for Appellee.

HAMILTON, J:

The facts are not in dispute and briefly stated are as follows:

During the month of January, 1936, plaintiffs, who were husband and wife, filed with the Iowa State Board of Assessment and Review a joint income tax return, in which they reported that they were engaged in no business but were farm owners and investors. They reported interest from all sources, including exempt interest in the sum of $1322.69. In the report they state that in addition to the interest reported they held bonds during 1935 and received interest therefrom as follows:

[fol. 72]

	Principal	Interest
State of Iowa, Soldiers Bonus bonds	$1000.00	$45.00
Iowa School District bonds	666,900.00	32648.75
Road Bonds of Iowa Counties	82,000.00	4072.50
County Bonds	3,000.00	127.50
	$752,900.00	$36893.75

Under the heading of "Income from rents and royalties" they report a deficit of $5031.16. From this they deduct the $1322.69 leaving a deficit or loss in taxable income of $3708.47. They also report deductions for interest, taxes, contribution to charities, etc. of $3120.50 or a net income deficit of $6828.97. They decline to pay the tax on the

$36,893.75 interest received from the municipal securities above listed, claiming that this interest was received on tax exempt bonds, and that the Iowa Income Tax Act does not impose a tax on said items of interest, and that if it did it would as to the bonds issued prior to its passage be unconstitutional, and they accordingly refuse to pay any tax upon said items of interest. The Iowa State Board of Assessment and Review corrected said return by charging the plaintiffs with an additional income tax because of the interest received on said bonds, making the amount of the net income $30,064.78 (after allowing the deficit of $6828.97 as disclosed by the plaintiffs' tax report) tax upon which would be $1403.24, less personal exemption and credit for dependents of $16.00, leaving a total tax imposed as corrected of $1384.24, and under date of February 8, 1936, gave the plaintiffs notice of assessment in accordance with the statute. In due time the plaintiffs made application for abatement of said tax and appealed for revision of the tax to the board, setting up in said application the same specifications as are contained in their petition in this action. There was a hearing before the board, affirming the tax as corrected and overruling the application of the plaintiffs [fol. 73] for revision and abatement of the tax. In due time and in accordance with the statutory provisions plaintiffs appealed from said order to the district court, and it is conceded that in all respects the statutory procedure has been complied with, both in imposing the tax and in raising the legal questions presented to this court.

Appellants emphasize very strongly in their argument that the interest received, being so received solely because of the incident of ownership of the bonds, could not be considered a gain or profit derived from any business or profession, and hence would not fall under the general classification of excise tax known and referred to as a tax on the privielege of transacting a business or occupation, and since the income was received solely as an incident to ownership and because of their ownership of said bonds, the appellants go one step farther and insist that this assessment was made solely because of the ownership of said bonds and therefore is a tax upon the bonds themselves.

We do not think it can be truthfully said that these plaintiffs were engaged in no business, in the broadest sense of that term. They list themselves as farm owners and in-

vestors. Their business therefore must be held to be that of looking after their farming interest and in vesting their capital. The extent of their farm business is only revealed by the deficit in income from rents and royalties listed in their report as $5031.16. This deficit no doubt is carried over from a separate farm income report, showing this deficit. Their ownership of other securities in addition to the municipal bonds, interest from which they claim is not taxable, is only shown by the amount of interest from all sources in the sum of $1322.69. The fact that they had most of their wealth invested in tax exempt securities in no way detracts from their status as investors of capital. They might be carrying on an investment business of several million dollars and own nothing but tax exempt securities and still contend that they had no business. Their capital in- [fol. 74] vestments in these tax exempt securities amounted to three quarters of a million dollars and they realized a gain or profit by way of interest on their investment of $36,-893.75, and while they were not engaged in the business of farming in the sense that they operated the farm or farms owned by them, but in the sense that the farms represented a part of their investments of their capital, labor, service and energy expended in an endeavor to make the farms pay or realize returns on such investment, they might well be said to be also engaged in the business of farming.

The case was ably presented by counsel representing the respective parties. The trial court took time to consider the facts and the law presented and rendered his decision in writing, which shows a careful analysis of the entire matter, and which we are incorporating at length in this opinion, and which reads as follows:

"The case presents the question whether income from tax exempt securities is subject to the state income tax.

"Plaintiffs argue that the Income Tax Statutes do not authorize the tax sought to be enforced. It seems clear from a reading of the Income Tax law that it is the expressed intent of the Legislature that this income is taxable. Code Section 6943-f7 provides: 'The term "net income" means the gross income of the taxpayer less the deductions allowed by this division.' The following section defines 'gross income' as 'gains, profits and incomes derived * * * from interest, rent, dividends, securities, or * * *

from any source whatever and in whatever form paid.' Par. 2 of the same section (6943-f8) contains an enumeration of the items exempt from the operation of the income tax, among which is: 'd. Interest upon the obligations of the United States or its possessions, agencies, or instrumentalities, which is or shall be exempt from state taxation [fol. 75] by federal law.' The statutory definition of income is clearly broad enough to include the income in question. The statute having exempted several items from the effect of the tax (including interest on obligations of the Federal government) it must be presumed that the legislature would have included interest from municipal bonds among the exemptions, if such had been its intent. As authority for this conclusion see, Willcuts v. Bunn, 75 L. ed. (U. S.) 304 at 306, where the Supreme Court places an analogous interpretation on the Federal Act. And, also in point on this question is appeal of Van Dyke, 259 N. W. (Wis.), 700 at 704.

"Does the operation of the tax on the income derived from the bonds involved in this case result in the impairment of any contractual obligation in violation of the State or Federal Constitutions?

"The conclusion above reached on the question of construction of the Income Tax Statutes leads to the result that as to the bonds issued after the Income Tax law went into effect (of the face value of $27,000) the interest therefrom is subject to the tax imposed by the defendant.

"All of the securities here involved, other than the $27,000 above referred to, were issued before the effective date of the Income Tax law. All the bonds were issued pursuant to statutory authority. The exemption statute applicable to most of the bonds is Code Section 6944, the first section in Chapter 330, which chapter is entitled: 'Property Exempt and Taxable.' The section reads: 'The following classes of property shall not be taxed: * * * 5. Public securities. Bonds or certificates issued by any municipality, school district, drainage or levee district * * *, or County within the State of Iowa * * *. 22. Soldiers bonus bonds.' Code Section 6953 provides: 'What taxable. All [fol. 76] other property, real or personal, is subject to taxation in the manner prescribed.' Part of the bonds in question were exempted also by Code Section 4753-a13, reading as follows: 'Bonds and road certificates * * * shall not be

taxed.' The exemption provided by Section 4753-a13 surely is not more broad than the exemption stated in Section 6944.

"Plaintiffs contend that the foregoing exemption constitutes a contractual obligation and that it is broad enough to exempt not only the bonds but also the income derived from the bonds from the income tax. It will be assumed that the exemption is in the nature of a contractual obligation which cannot be impaired. Perhaps it could be contended with some force by the defendant that the exemption is not contractual but merely declaratory of a legislative policy which is not irrevocable. On this point, see Wisc. & M. R. Co. v. Powers, 48 L. Ed. (U. S.) 229. The serious question is whether the statutory exemption of the bonds, conceding it to be contractual, is broad enough to include exemption of the income from the securities from the income tax. Defendant contends that the statutory exemption applies only to general property taxation and that the income tax is not a property tax but is an excise tax. It is undoubtedly the general rule that an exemption from property tax does not constitute an exemption from an excise tax. In order to sustain the tax in question it is not necessary fully to adopt the defendant's contentions. The tax is enforceable if the statutory exemption of the bonds is too narrow to exempt the income from the operation of the income tax. Although the matter is not wholly free from doubt, it seems fairly clear that the exemption is not so broad as plaintiffs contend and that the income tax is enforceable. Following [fol. 77] are the principal reasons and some of the authorities to be given in support of this conclusion.

" 'Taxation is the rule and exemption the exception, and therefore, strict construction of the statute (now Code Section 6944) under which the exemption is claimed is the rule.' City of Sioux City v. School District, 55 Iowa, 150 at 152. 'Grants of immunity from taxation, in derogation of a sovereign power of the State, are strictly construed.' Pacific Co. v. Johnson, 285 U. S. 480 at 491. The authorities make it clear that the statutory exemption must be given a strict and somewhat narrow construction as distinguished from a liberal and broad construction. It is also clear that every presumption is indulged in favor of the constitutionality of the income tax statute; that it must be upheld unless its invalidity is manifest beyond a reasonable doubt. Code Section 6944 must, if fairly possible, be so construed as to save the constitutionality of the income tax law.

"The exemption statute itself—construed in the light of the foregoing rules—seems to be applicable only to property taxation. The wording of the section (6944) itself so indicates. And see Code Section 6953. The Iowa Court has so construed this same section in cases where it was sought to exempt public property from special assessments. Sioux City v. School District, 55 Iowa 150; E. & W. Construction Co. v. Jasper County, 117 Iowa, 365. And in a case where it was sought to have exempted property owned by an alleged charitable institution from a business or license tax the same construction was placed on the same statute. Iowa Mut. Tornado Ins. Ass'n. v. Gilbertson, 129 Iowa, 658. In State v. City of Des Moines, No. 43016, decided March 17, 1936, it is held that the same statute (exempting property [fol. 78] of a city from taxation) does not exempt a city from paying the state gasoline tax on gasoline owned and used by the city, the court saying that the gasoline tax is not a property tax but an excise tax. This last decision is in line with numerous decisions from many different jurisdictions under strikingly similar statutory provisions. Some of the many authorities are cited in the City of Des Moines case.

"There is much respectable authority in other jurisdictions sustaining the view that a similar statutory exemption of municipal bonds from taxation refers only to general property taxes and not to such a tax as the income tax. Appeal of Van Dyke, 259 N. W. (Wisc.), 700, so holds. People v. Gilchrist, 67 L. Ed. (U. S.) 883, recognizes the doctrine for which defendant contends by affirming a decision of the New York Court of Appeals in the following words (quoting from page 893):

"'Considering that only the principal of mortgages was taxed when the law was passed, and that in those days no one thought of an income tax; *that any contract of exemption must be shown to have been indisputably within the intention of the legislature;* that it is difficult to believe that the legislature meant to barter away all its powers to meet future exigencies for the mere payment of a mortgage recording tax; and that a tax upon the individual, measured by net income, might be regarded as one step removed from a tax on the capital from which the income was derived (Wm. E. Peck & Co. v. Lowe, 247 U. S. 165). It (N. Y. Ct.

of Appeals) held that there was no promise that the present [fol. 79] (income) tax should not be imposed.'

"The validity of state income tax statutes has not generally been called into question in the courts under constitutional provisions requiring that all property shall be taxed uniformly according to its true value. Apparently most of the states have constitutional provisions of this character. Although there are a few exceptions, it has most generally been held in most jurisdictions that such constitutional provisions apply only to property taxation; that income is not 'property' within the law of taxation; that an income tax is not a property tax but falls more nearly within the category of excise taxes. Some of the many authorities so holding are O'Connell v. Board, 25 Pac. 2nd. (Mont.), 114; Diefendorf v. Gallet, 10 Pac. 2nd. (Idaho), 307; Maxwell v. Mfg. Co., 168 S. E. (N. C.), 397; Bacon v. Ranson, 56 S. W. 2nd. (Missouri), 786; State v. Nichols, 265 N. W. (N. D.), 859.

"In Black on Income and Other Federal Taxes (3rd Ed., Sec. 44) it is said:

" 'The term "property" as used in reference to taxation means the corpus of an estate or investment as distinguished from the annual gain or revenue from it.'

"It seems unnecessary to determine the question whether an income tax is, strictly speaking, an excise tax. The Iowa Income Tax Act, in terms, imposes a tax 'upon every resident of the state, which tax shall be levied, collected and paid annually upon and with respect to his entire taxable income, etc.' (Code 6943-f). Thue the tax in question purports to be upon the person. There is much authority for the proposition that an income tax is a tax upon the recip- [fol. 80] ient of the income rather than upon the income as a thing. This seems to be the trend of the later decisions. An income tax cannot fairly be called a tax on property within the usual accepted sense of the term. Corpus Juris states that the weight of authority is that the income tax falls more nearly within the category of excise taxes. 61 C. J. 1560. A general income tax on income from all sources is generally recognized as an excise although it may include income from property. 26 Ruling Case Law, page 142. Among the many recent cases discussing at length the character of an income tax where the conclusion is reached that

it is an excise, in addition to the cases last above cited, are Miles v. Department of Treasury, 193 N. E. (Ind.), 855, 97 A. L. R. 1474; and Featherstone v. Norman, 153 S. E. (Georgia), 58, 70 A. L. R. 449. The United States Supreme Court expressly says that an income tax is an excise in Brushaber v. Union Pacific, 240 U. S., 1.

"That a general net income tax is an indirect, rather than a direct tax, is recognized in the oft repeated language of Justice Pitney speaking for the Supreme Court in U. S. Glue Company v. The Town of Oak Creek, 247 U. S. 321 at 328: 'The difference in effect between a tax measured by gross receipts and one measured by net income, recognized by our decisions, is manifest and substantial, and it affords a convenient and workable basis of distinction between a direct and immediate burden upon the business affected and a charge that is only indirect and incidental.'

"Plaintiffs cite as authority for their contention that the statutory exemption is broad enough to exempt the income from the bonds: MacAllen v. Massachusetts, 73 L. Ed. (U. S.), 874; Eisner v. Macomber, 252 U. S. 189; Gillespie [fol. 81] v. Oklahoma, 66 L. Ed. (U. S.) 338; and some other like cases. Only the MacAllen case is in point on its facts. Undoubtedly the MacAllen case is the strongest authority for the plaintiffs. Three Justices dissent. The majority opinion reverses a unanimous decision of the Supreme Court of Massachusetts, which state decision is in line with the argument of defendant in the case now before the court. There appear to be some distinctions between the MacAllen case and the present case. In the first place, the Massachusetts statute creating the exemption that is involved in the MacAllen case is headed '*Persons and* property exempt from taxation' and the statute reads: 'Sec. 5. The following property *and polls* shall be exempt from taxation.' Thus the statute under which the bonds in the MacAllen case were claimed to be exempt undertook to exempt both persons and property. Furthermore, the Massachusetts statute does not purport to be a general income tax statute but applies solely to domestic business corporations. Then, too, under the Massachusetts act, as originally passed, income from tax exempt securities was exempted from the income tax. Subsequently, this exemption of such income was removed, resulting (so the Court felt) in discrimina-

tion against tax-exempt securities. (See Pacific Co. v. Johnson, 285 U. S. 480 at 494.)

"It seems that the MacAllen case is in effect overruled—certainly the weight of its authority is very much lessened, to say the least—by the more recent cases of Pacific Co. v. Johnson, 285 U. S. 480, and Educational Films Corp. v. Ward, 282 U. S. 379. In the Pacific Company case the arguments and briefs of counsel set out with the report of the decision are strikingly similar to the arguments and briefs presented by the attorneys in the case at bar. The Pacific [fol. 82] Company case holds squarely that a tax may be levied against a corporation based upon the entire net income of the corporation including that from tax exempt municipal bonds. The majority of the Court (there were three dissenting Judges) cites the identical cases cited by the Massachusetts Court in its opinion in the MacAllen case (163 N. E. 75) and refuses to follow the majority opinion in the MacAllen case. The majority opinion in the Pacific Company case seems to be a complete answer to plaintiffs' contentions in the present case. The other case, later in point of time than the MacAllen case, Educational Films Corporation v. Ward, 282 U. S. 379, upholds a corporation franchise tax based on net income including income as royalties from copyrights granted by the United States (copyrights were exempt from taxation). Both the majority and dissenting opinions deal very largely with a discussion of the MacAllen case. For a criticism on the MacAllen case in which it is stated that it marks a new attitude toward excise taxes and that it makes the validity of the tax depend upon what the Court concludes the legislative intent to have been, see Note Vol. 30, Columbia Law Review, page 92 at 100. This view expressed in the MacAllen case seems to be repudiated in the Pacific Company case.

"The next case in importance cited by plaintiffs is Gillespie v. Oklahoma, 257 U. S. 501. In Burnet v. Coronado Oil & Gas Company, 285 U. S. 393, at page 398, the Supreme Court says: 'We are disposed to apply the doctrine of Gillespie v. Oklahoma (257 U. S. 501) strictly and only in circumstances closely analogous to those which it disclosed.'

"It is well settled that tax exempt federal, or other bonds are not exempt from state or federal inheritance tax. Plummer v. Coler, 44 L. Ed. 998; Blodgett v. Silberman, 277 [fol. 83] U. S. 1; Greiner v. Lewellyn, 66 L. Ed. 676. In

Peck v. Lowe, 62 L. Ed. 1049, it is held that income from shipping goods to foreign countries and there selling them may be taxed, notwithstanding the constitutional provision that 'No tax or duty shall be laid on articles exported from any state.' In Flint v. Stone Tracy Company, 220 U. S. 107, recognized as authority in the MacAllen case and expressly reaffirmed in the later Pacific Company and Educational Films Corporation cases, it is held that an excise tax on corporations may include income from tax exempt securities. Earlier cases upholding state franchise taxes measured by net property or income including tax exempt bonds or their income are: Society v. Coite, 18 L. Ed. 897; Provident Institute v. Massachusetts, 18 L. Ed. 913; and Home Ins. Co. v. New York, 33 L. Ed. 1025. In U. S. Glue Co. v. Town of Oak Creek, 247 U. S. 321, it is held that a state income tax is valid even though it includes net income derived from transactions in interstate commerce where there is no discrimination against such income.

"For the foregoing reasons it is accordingly by the Court Ordered, Adjudged and Decreed that the assessment herein appealed from is hereby affirmed and upheld and the plaintiffs' appeal therefrom is hereby dismissed and the additional assessment against the plaintiffs, Henry O. Hale and Elizabeth C. Hale, in the sum of $1387.24, hereby stands affirmed. Costs of this case are to be taxed by the Clerk to said plaintiffs."

There is little that could be added to the foregoing carefully prepared opinion of the able trial court. We have carefully examined the authorities cited and read the able arguments of counsel for appellants. We understand their [fol. 84] position but are unable to subscribe to the proposition that a general income tax law imposed upon the entire income is a property tax. This court held in the case of City of Dubuque v. Northwestern Life Ins. Co., 29 Iowa, page 9, decided in 1870, that gross income was not property within the meaning of the law authorizing the city to collect taxes upon "taxable property." The court said: "It certainly cannot be claimed that the gross income of individuals or corporations from any business in which they may be engaged for a specified period without regard to the money or property realized and on hand at the expiration of the time can be properly described by the term property.

No one will pretend that the sum shown as the footing of the debit side of the merchant's cash book, during a year's business, can be called property. The money represented by each item of the account when in his possession was property, but the aggregate of the whole amount of money passing through his hands for a year could not, at the end of that time, when he possessed a small portion of it, be called his property." Neither can we subscribe to the appellants' contention that the law exempting the bonds themselves from taxation likewise exempts the interest, or that the inclusion of the income or interest from the bonds in the total of the gross income of the individual under the income tax law is a tax upon the bonds themselves. It is only fair to assume that the legislature at the time of the enactment or re-enactment of the tax exemption statutes relied upon by appellants was advised of the prior holdings of this court to the effect that the tax exemption laws in this state had been construed by this court as having reference to general property taxes only, and would have therefore specifically broadened the tax exemption provisions subsequently enacted to include taxes other than general property tax, if such was the intention of the legislature. Not having done so, we are not, under the rule of [fol. 85] strict construction applied to tax exemption laws, permitted to enlarge the meaning which the legislature undoubtedly must have intended, and to extend the tax exemption statute to include the interest as well as the bonds themselves. Since the total of a person's entire income over the taxing period is not considered property, as that term is used in the statutes relating to the imposition of taxes upon property, real and personal, and since the tax exemption statutes have reference to a general property tax, which is the construction this court has always placed upon such statutes and of which we must assume the legislature took cognizance, it necessarily follows that the contractual immunity from taxation applicable to the bonds themselves was not intended by the legislature to be extended to include the interest on the bonds or to include a tax other than a general property tax. Neither can we agree with counsel that the tax was imposed "solely because of the ownership of said bonds." There is much more than mere ownership involved in looking after an investment of three quarters of a million dollars, collecting

and reinvesting some $36,000 interest thereon annually. In addition to this they had other securities as well as their farming interests. It required labor, thought, energy, all of which is included with title and ownership in husbanding the large fortune, measured by the holding of the average family, which appellants had accumulated under the beneficent laws and protecting care of their government.

The decree of the trial court is therefore affirmed.

Affirmed.

Richards, C. J., Anderson, Parsons, Stiger, Donegan, JJ., concur.

Mitchell takes no part.

[fols. 86-89] IN SUPREME COURT OF IOWA

43610

HENRY O. HALE and ELIZABETH C. HALE, Appellants,

vs.

IOWA STATE BOARD OF ASSESSMENT AND REVIEW, Appellee

Appeal from Webster District Court

JUDGMENT—January 19, 1937

In this cause, the Court being fully advised in the premises, file their written opinion affirming the judgment of the District Court.

It is therefore considered by the Court that the judgment of the Court below be, and it is hereby, affirmed, and that a writ of procedendo issue accordingly.

It is further considered by the Court that the appellants pay the costs of this appeal, taxed at $61.95 and that execution issue therefor.

[fol. 90] IN SUPREME COURT OF IOWA

EXCERPTS FROM APPELLEE'S BRIEF AND ARGUMENT—Filed August, 1936

"A general constitutional or statutory provision exempting property of a state, county or municipal corporation,

including bonds, from taxation, applies only to general property taxes, and has no application to an excise tax."

"Section 6944 (5) and (22) and Section 4753-A13 of the Code of 1935, exempting certain bonds from taxation, apply only to general property taxes."

"A general income tax law such as we find in Chapter 82 of the Acts of the 45th General Assembly, Extra Session, (Chapter 329-F1 of the Code of 1935), does not provide for a general tax on property, but for an excise tax."

[fol. 91] IN SUPREME COURT OF THE UNITED STATES

[Title omitted]

PRÆCIPE OF APPELLEE FOR TRANSCRIPT OF ADDITIONAL PORTIONS OF RECORD—Filed March 8, 1937

To Honorable B. W. Garrett, Clerk of the Supreme Court of Iowa:

Please include in the transcript of the record to be transmitted to the Supreme Court of the United States, in addition to the portions referred to in appellants' Præcipe, the following:

1. Statement of Appellee against the Jurisdiction of the Supreme Court of the United States, which statement is now on file in the office of the Clerk of the Supreme Court of Iowa.

2. Show the filing date on said Statement against the Jurisdiction of the United States Supreme Court.

3. Acknowledgment of counsel for appellants of service of said Statement against Jurisdiction.

4. From page ten, Appellee's Brief and Argument, the following:

"A general constitutional or statutory provision exempting property of a state, county or municipal corporation, including bonds, from taxation, applies only to general property taxes, and has no application to an excise tax."

5. From page seventeen, Appellee's Brief and Argument [fol. 92] the following statement:

"Section 6944 (5) and (22) and Section 4753-A13 of the Code of 1935, exempting certain bonds from taxation, apply only to general property taxes."

6. From page twenty-five, Appellee's Brief and Argument, the following statement:

"A general income tax law such as we find in Chapter 82 of the Acts of the 45th General Assembly, Extra Session (Chapter 329-F1 of the Code of 1935), does not provide for a general tax on property, but for an excise tax."

7. This Præcipe for Transcript of Additional Portions of the Record, together with the acknowledgment of service.

John H. Mitchell, Attorney General of the State of Iowa. Clair E. Hamilton, Special Assistant Attorney General, Attorneys for Appellee.

[fol. 93] Due, timely and proper service of the foregoing Præcipe of Appellee for Transcript of Additional Portions of Record, and receipt of copy thereof, is acknowledged at Des Moines, Iowa, this 8th day of March A. D. 1937.

Henry O. Hale and Elizabeth C. Hale, Appellants, by Wm. L. Hassett, Alan Loth, Their Attorneys.

[fol. 94] IN SUPREME COURT OF THE UNITED STATES

APPELLANTS' STATEMENT OF POINTS AND DIRECTIONS FOR PRINTING RECORD—Filed March 20, 1937

(A) Points Relied on by Appellants

1. The statutes providing that the bonds "shall not be taxed" inhered in the contracts as a term thereof within the Contract clause of the Federal Constitution.

2. The scope and obligation of the contract claimed to have been impaired, and whether the state statute does impair it, are determined by the United States Supreme Court independently of the State Court's decision appealed from.

3. An income tax on interest, derived solely from the ownership of bonds which are contractually exempt from taxation, violates the immunity and unconstitutionally impairs the contract. It is, essentially, a tax on the bonds. Interest on bonds which are immune from property taxation is therefore immune from income taxation.

4. If the tax were an excise on the privilege of receiving this interest, it would still impair the contractual exemption. An excise on the transmissal or receipt of a fund under a pre-existing vested contractual right impairs the contract. Receiving such payment is not a taxable privilege.

5. Whether the tax infringes the contractual immunity from taxation must be determined by its practical incidence [fol. 95] and effect. It does not even pretend to be an excise or privilege tax.

6. It is stipulated that appellants received this interest "solely by virtue of their ownership of these bonds." In so doing they exercised their absolute right, not a taxable privilege which can be the subject of an excise. The tax cannot be ascribed to any taxable subject other than the property in the bonds, and its incidence must be on the bonds. Terming the income tax on this income an excise is not sufficient to evade the fact that it impairs the contractual immunity of the bonds from taxation.

7. The lower courts were wrong in treating MacAllen v. Massachusetts, 278 U. S. 620, and Gillespie v. Oklahoma, 257 U. S. 501, as overruled by Educational Films Co. v. Ward, 282 U. S. 379, and similar cases. The latter hold that a tax on the privilege of exercising a corporate franchise may be measured by income; and reaffirm the rule that if the tax is in fact an income tax and not a franchise tax, it cannot be laid on income from exempt property (which is what we here claim).

8. Such cases as Norman v. Featherstone, cited in the opinions below, have no application here, merely holding that a graduated income tax is generally not forbidden by constitutional requirement of uniformity in taxation.

9. The statutes giving the immunity embrace all forms of property taxation, and cannot be construed to refer only to forms of taxation in vogue when they were passed, and thus to permit the income tax as a new form of property taxation.

10. The Iowa court had never held that the exemption statutes applied only to "general" property taxes (whatever that may mean). It had only held that the exemption does not apply to franchise or privilege taxes, or to special assessments for special benefits.

[fol. 96] 11. The original exemption statutes, which alone constitute our contract, cannot be narrowed by construing them as limited by the Income Tax Law, passed years later, which impairs that contract.

12. The assumption of the State Supreme Court that appellants can be treated as exercising some taxable privilege is without support, and is directly contradicted by the stipulation that they received the income solely by virtue of the mere ownership of their property. Indeed, nothing assumed by the Iowa court constitutes a taxable privilege.

13. Dubuque v. Northwestern Life Ins. Co., 29 Iowa 9, is inapplicable because it dealt with a wholly different situation and was controlled by the very different wording of the old statute, no longer in force.

14. The Iowa Income Tax law construed to impair the contract and infringe the individual rights of these appellants is invalid as to them, regardless of its general validity as to others.

(B) Designation of Record to Be Printed

Appellants state that it is necessary to print the entire record as certified to this Court from the Supreme Court of the State of Iowa, save only the following which may be omitted in printing:

1. The bond for appeal which appears at Pages 8 and 9 of the Record as certified.

2. The oral testimony of William L. Hassett commencing at line 14, page 54, and ending with line 3, page 58 of the record as certified by the Supreme Court of Iowa (further identified as commencing at line 14, page 14 and ending with line 3, page 18 of the abstract of record which was filed in the Supreme Court of Iowa).

[fol. 97] 3. Exhibits B and C, commencing at line 6, page 58 and ending with line 11, page 59 of the record as certified by the Supreme Court of Iowa (further identified as commencing at line 6, page 18 and ending with line 11, page 19 of the abstract of record filed in the Supreme Court of Iowa).

4. Omit the opinion of the trial court beginning at line 17, page 59 and ending with line 20, at page 68 of the record as certified by the Supreme Court of Iowa (further identified as commencing at line 17, page 19 and ending with line 20, page 28 of the abstract of record in the Supreme Court of Iowa). However, there should be inserted in lieu of this trial court opinion a statement that the same is incorporated verbatim in the opinion of the Iowa Supreme Court.

And accordingly, appellants designate for printing the entire record herein, except the foregoing.

Denis M. Kelleher, Attorney for Appellants.

Service of the foregoing and receipt of copy is admitted and acknowledged this 12th day of March, 1937.

John H. Mitchell, Clair E. Hamilton, Attorney- for Appellee.

[fol. 98] [File endorsement omitted.]

Endorsed on cover: File No. 41,372. Iowa Supreme Court. Term No. 832. Henry O. Hale and Elizabeth C. Hale, appellants, vs. The Iowa State Board of Assessment and Review. Filed March 22, 1937. Term No. 832, O. T., 1936.